

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,029
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Emergency Assistance (EA) for overdue mortgage payments. The issue is whether the petitioner has exhausted her eligibility for EA in that she previously received EA within the last twelve months.

FINDINGS OF FACT

1. The petitioner lives with her three children in a home that she owns. Her income is \$1200 a month in child support from her husband, from whom she is separated, and \$180 a month in Food Stamps. Her mortgage payment is \$885.52 a month.
2. In November, 1998, the petitioner and her husband, who was then living in the household, applied for EA for their overdue mortgage payments.
3. The Department determined that the family was eligible for EA for a one-month arrearage payment, but that it did not meet the "good cause" criteria under the regulations (see infra) for a two-month payment. The petitioner did not appeal this decision.
4. The Department mailed the EA payment to the petitioner's mortgage holder in early December, 1998. However, the payment was not received because the Department had

been given an incorrect address, and the Department eventually stopped payment on the check.

5. The Department made another attempt to mail the payment in early January, 1999, but the new address the Department had been given was also wrong, and payment on this check had to be stopped as well.

6. The Department finally succeeded in obtaining the correct address for the petitioner's mortgage holder in April, 1999, and the check for one month's mortgage payment was sent by the Department and cashed by the mortgage holder.

7. The petitioner alleges that the family got behind in their mortgage payments in November, 1998, because of her husband's irresponsible spending habits. The petitioner and her husband separated in December, 1998, and the petitioner remained in the home with her three children. Sometime after the separation, the husband began paying child support to the petitioner.

8. The petitioner applied again for EA in June, 1999, alleging that she was still more than one month behind in her mortgage payments. The Department denied her application because of a provision in the regulations barring all EA assistance to families who have already received EA within a year prior to their application, and barring rent and arrearage payments to certain families within three years of the prior receipt of such benefits (see infra).

### ORDER

The Department's decision is affirmed.

REASONS

The EA regulations provide that a "family" is eligible to receive EA only once in any period of twelve consecutive months. W.A.M. § 2800A. The regulations regarding EA payments for rental or mortgage arrears are reproduced below.

In this case, the petitioner does not dispute that when she and her husband applied for EA in November, 1998, they did not meet either of the "good cause" criteria in the above regulation to qualify for two months, instead of one month, arrearage payments. The

petitioner admits that their financial difficulties at that time were primarily caused by her husband's profligate spending habits rather than a lack of income necessary to meet their essential expenses.

However, the petitioner argues that by the time the Department was able to actually make the EA payment in April, 1999, her husband had left the household and she was then qualified under the "good cause" criteria for a two-month arrearage payment. Therefore, the petitioner argues, when she made her application for EA in June, 1999, even though she had received EA within the past twelve months, the Department should have found her eligible for the second month of a two-month arrearage payment.

It is clear, however, that the provisions of § 2813.3 (supra) regarding "good cause" refer to a family's situation at the time of its application for assistance, not when the assistance is actually paid. It is possible under the circumstances that had the petitioner reapplied for EA after her husband left, but before the payment was actually made, she could have withdrawn her earlier application and prevailed upon the Department to look at her existent circumstances at that time. However, the petitioner did not reapply before April, when the Department paid out the EA she had qualified for the previous November. Therefore, the petitioner cannot use the delay in the Department's issuance of her EA check to, in effect, reopen her application and change the date of its effectiveness completely ex post facto.

Following the hearing in this matter (held on August 11, 1999) the hearing officer raised the issue of whether the petitioner's separation from her husband in December, 1998, changed the composition of her "family" within the meaning of the regulations so that she was no longer ineligible based on the prior EA payment to the "family" as it was constituted in

November, 1998.

In its written response the Department admits that the term "family" is not specifically defined in the EA regulations. However, the Department points out that the EA regulations are based on federal statutes concerned with aid to the families with "needy children" and "dependents" for whom the applicant is "responsible". See 42 U.S.C. § 606(e)(1) and W.A.M. § 2801. In view of this clear statutory scheme and purpose, it cannot be concluded that the Department's view of "family" as being defined by the children on whose behalf aid is given is incorrect.

In this case, the petitioner's children were beneficiaries of the Department's grant of EA in November, 1998. It is on behalf of those same children that the petitioner's June, 1999, EA application is based. The fact that the petitioner's husband is no longer in the household does not mean that the "family" comprising these children has not received EA within the last twelve months.<sup>1</sup> Therefore, the Department's decision in this matter is affirmed.

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<sup>1</sup> Unfortunately for the petitioner, this means that under § 2813.3 she is not eligible for EA for rental or mortgage arrearages for the 36 months following December, 1998.